(17,361.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 259.

THE CINCINNATI, HAMILTON AND DAYTON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

BENJAMIN F. THIEBAUD, ADMINISTRATOR OF THE ESTATE OF CHRIS. SWEETMAN, DECEASED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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1 United States Circuit Court of Appeals, Sixth Circuit.

THE CINCINNATI, HAMILTON & DAYTON Railroad Company, Plaintiff in Error, *v.* BENJAMIN F. THIEBAUD, Administrator of the Estate of Chris. Sweetman, Deceased, Defendant in Error.	No. 661. Error to the Circuit Court of the United States for the Southern District of Ohio, Western Division.

This was an action brought by Benj. F. Thiebaud, a citizen of Indiana, as administrator of Chris. Sweetman, deceased, appointed by the circuit court of Fayette county, Indiana, against the C., H. & D. R. R. Co., a corporation and citizen of Ohio, to recover damages for the wrongful death of said Chris. Sweetman, who, while employed as a locomotive engineer by said company, on an engine drawing its pay car, was, without fault on his part, killed in a collision between his engine and that of a freight train. The collision was caused by the negligence of the conductor and engineer of the freight train. The court charged the jury, among other things, that inasmuch as the deceased had been killed through the negligence of fellow-servants, the defendant would probably not be liable at common law, but that it was liable for the negligence charged and admitted under the act of the General Assembly of Indiana, approved March 4, 1893, entitled "An act regulating the liability of railroad and other corporations, except municipal, for personal injuries to persons employed by them," etc. Laws of Indiana, 1893, p. 294; Rev. Stat. Ind., secs. 7083–7087. Upon which act the plaintiff relied for recovery; to which charge the defendant excepted.

The record does not show upon what ground said exception was taken and does not show that said exception was upon the ground that the statute contravenes the Constitution of the United
2 States, or that the constitutionality of the statute was otherwise raised or considered or decided by the circuit court. The statute is not mentioned in any of the pleadings. The record shows other exceptions taken duly assigned for error, which do not raise any constitutional question, and which may require the reversal of the judgment of the circuit court without reference to any constitutional question.

The jury rendered a verdict in favor of the plaintiff, and judgment was entered thereon.

Thereafter the defendant brought the case, by writ of error, to this court, and assigned for error:

1. That the court erred in charging the jury that the defendant was liable under the act of the General Assembly of Indiana, approved March 4, 1893.

2. That said act is in contravention of the fourteenth amendment of the Constitution of the United States.

3. That said act is in contravention of the constitution of the

State of Indiana and especially of article 11, section 23, of article 4, sections 19 and 23 thereof.

4. That the court erred in overruling the defendant's motion to dismiss the action for want of jurisdiction.

5. That the court erred in refusing to permit the defendant to put the following question to the witness, Charles M. Cist: "Where were those personal effects at the time you made your application?"

6. That the court erred in ruling out and excluding the testimony offered by the defendant to show that plaintiff's administration was not based upon any personal estate in Fayette county, Indiana, other than the claim sued on.

Thereupon the plaintiff in error moved in this court to dismiss the case for want of jurisdiction, on the ground that it is a case in which it is claimed that the statute of a State is in contravention of the Constitution of the United States, and that, therefore, under section 5 of the act of Congress approved March 3, 1891 (26 Stat., 826), the writ of error should be taken from the Supreme Court of the United States and not from this court.

The court is in doubt whether the case is within the provisions of said section of the act of Congress, and, therefore, upon the foregoing statement of facts it is ordered that the following questions be certified to the Supreme Court of the United States for its instructions:

1. Has the circuit court of appeals jurisdiction of a writ of error to the circuit court in a case in which it is claimed that a law of a State is in contravention of the Constitution of the United States, where the record presents other questions not involving the Constitution of the United States?

3 2. Has the circuit court of appeals jurisdiction of a writ of error to the circuit court in a case in which it is claimed that a law of a State is in contravention of the Constitution of the United States, where the record presents other questions not involving the Constitution of the United States which might require a reversal of the judgment without reference to such constitutional question?

3. Does a record showing an instruction by the circuit court directing a jury that the plaintiff is entitled to recover in his action under a State law, upon which the plaintiff relies for recovery, to which instruction a general exception is reserved by the defendant, disclose a case in which it is claimed that the law of a State is in contravention of the Constitution of the United States, within the meaning of section 5 of the act of March 3, 1891, where the record of the circuit court does not affirmatively show that any issue as to the statute was raised by the pleadings, and where the record does not affirmatively show that said exception to said instruction was upon the ground that said statute was in contravention of the Constitution of the United States, or that the constitutionality of said statute was otherwise presented or considered or passed upon by the circuit court?

4. If it be considered that such record in the circuit court does

not disclose a case in which a law of a State is claimed to be in contravention of the Constitution of the United States, but such claim is made so far as the record shows for the first time in the circuit court of appeals by assignment of error, and is insisted upon at the bar, has the circuit court of appeals jurisdiction in error to hear and determine the constitutional question raised by such claim?

It is further ordered that all proceedings in this case be stayed until the instructions of the Supreme Court on the foregoing questions be certified to this court.

WM. H. TAFT,
HORACE H. LURTON,
C. D. CLARK,
Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Sitting in said Cause.

March 29, '99.

4 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial Circuit,* } ss:

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing certificate and statement of facts in the case of The Cincinnati, Hamilton & Dayton Railroad Company *vs.* Benjamin F. Thiebaud, administrator of the estate of Chris. Sweetman, deceased, was duly filed and entered of record in my office by order of said court, and, as directed by said court, the said certificate was by me forwarded to the Supreme Court of the United States for its action thereon.

Seal United States Circuit Court of Appeals, Sixth Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at the city of Cincinnati, Ohio, this 29th day of March, A. D. 1899.

FRANK O. LOVELAND,
Clerk of United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No., 17,361. U. S. C. C. of appeals, 6th circuit. Term No., 259. The Cincinnati, Hamilton and Dayton Railroad Company, plaintiff in error, *vs.* Benjamin F. Thiebaud, administrator of the estate of Chris. Sweetman, deceased. Filed April 10, 1899.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 271.

THE CINCINNATI, HAMILTON AND DAYTON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

BENJAMIN F. THIEBAUD, ADMINISTRATOR OF CHRIS. SWEETMAN, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED APRIL 24, 1899.

(17,379.)

(17,379.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 271.

THE CINCINNATI, HAMILTON AND DAYTON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

BENJAMIN F. THIEBAUD, ADMINISTRATOR OF CHRIS. SWEETMAN, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 20, 1899.

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *Southern District of Ohio, Western Division,* } ss:

At a stated term of the circuit court of the United States of America within and for the western division of the southern district of Ohio, in the sixth judicial circuit of the United States of America, begun and *had* in the court-rooms at the city of Cincinnati, Ohio, in said district, on the first Tuesday of April, being also the fifth day of that month, in the year of our Lord one thousand eight hundred and ninety-eight, and of the American Independence the one hundred and twenty-second—present, the Honorable Geo. R. Sage, district judge—among the proceedings had were the following, to wit:

BENJAMIN F. THIEBAUD, Administrator of the Estate of Chris. Sweetman, Deceased. Plaintiff,
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILroad Company, Defendant. } No. 5015. At Law.

Be it remembered that heretofore, to wit, on the twenty-fifth day of February, in the year of our Lord one thousand eight hundred and ninety-seven, came the plaintiff herein by his attorneys and filed his certain petition and præcipe against the defendant herein, in the clerk's office of the court aforesaid, which said petition and præcipe were clothed in the words and figures following, to wit:

Petition and Præcipe.

United States Circuit Court for the Southern District of Ohio, Western Division.

BENJAMIN F. THIEBAUD, Administrator of the Estate of Chris. Sweetman, Deceased, Plaintiff,
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILroad Company, Defendant. } No. —. Petition.

2 Plaintiff says that on the 20th of February, 1897, he was duly appointed and qualified by the circuit court of Fayette county, State of Indiana, as the administrator of the estate of Chris. Sweetman, deceased, and is a resident and citizen of the State of Indiana.

The defendant is a corporation duly organized under the laws of the State of Ohio, and is a citizen of Ohio, and is now and was in September, 1896, operating a railroad between Cincinnati, Ohio, and Indianapolis, Indiana, and other points.

On the 18th day of September, 1896, plaintiff's decedent, the said Chris. Sweetman, was in the employ of the defendant as an engineer running a locomotive engine of a train operated by defendant on its said railroad, between Indianapolis, Indiana, and Hamilton, Ohio, and while so engaged in the discharge of his duties upon said engine and without fault on his part, but wholly through the negligence of the defendant, its servants, agents and employés, the same was brought into violent collision with another engine belonging to and operated by defendant, near the town of Connersville, Indiana, in which collision the said Chris. Sweetman received injuries from which he died.

The said Chris. Sweetman left surviving him his widow Mary K. Sweetman, and children Clara M. Sweetman and Charles C. Sweetman, for whose benefit plaintiff brings this action, who have been damaged by reason of the death as aforesaid of plaintiff's intestate in the sum of ten thousand dollars for which plaintiff asks judgment and for costs.

CHARLES M. CIST,
EDGAR W. CIST,
Attorneys for Plaintiff.

THE STATE OF OHIO, }
Hamilton County, } *ss:*

Charles M. Cist, being duly sworn, says that he is attorney for Benjamin F. Thiebaud, administrator of the estate of Chris. Sweetman, deceased, plaintiff herein, who is a non-resident of and absent from said Hamilton county, Ohio, and the district aforesaid, and that the facts set forth in the foregoing petition are true as he verily believes.

CHARLES M. CIST.

Sworn to before me and subscribed in my presence this 24th day of February, 1897.

SAM'L S. CHURCH,
[SEAL.] *Notary Public.*

40 cents due S. S. Church.

Præcipe. Issue summons for defendant. Endorse action for money, $10,000 as damages.

3 And afterwards, to wit, on the 25th day of February, A. D. 1897, there was issued out of the clerk's office of the court aforesaid our certain summons directed to the marshal of the said district; which said summons was clothed in the words and figures following, to wit:

Summons.

UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, }

The President of the United States of America to the marshal of the southern district of Ohio, Greeting:

You are commanded to summon The Cincinnati, Hamilton & Dayton Railroad Company, citizen of and resident in the State of Ohio, if it be found in your district, to be and appear in the circuit court of the United States, for the southern district of Ohio, aforesaid, at Cincinnati, on the fourth Tuesday in the month of March, 1897, to answer unto Benjamin F. Thiebaud, administrator of the estate of Chris. Sweetman, deceased, citizen of and resident of the State of Indiana, in civil action for money as damages.

And have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 25th day of February, A. D. 1897, and in the 122nd year of the Independence of the United States of America.

Attest: B. R. COWEN, *Clerk,*
[SEAL.] By ROB'T C. GEORGI, *Deputy.*

Endorsed: $30.00 deposited security for costs. Action for the recovery of money only. Amount claimed $10,000, for which judgment may be taken, unless it answer on or before the fourth Tuesday in the month of March, 1898.

And afterwards, to wit, on the 10th day of March, A. D. 1897, came the marshal of said district, to whom the aforesaid summons was in form directed, and returned the same into the clerk's office of the court aforesaid, with his proceedings thereon endorsed, clothed in the words and figures following, to wit:

Marshal's Return.

Received this writ on the 27th day of February, A. D. 1897, and on the 10th day of March, A. D. 1897, I served the same by
4 leaving a true copy thereof with the endorsement thereon at the residence of F. H. Short, treasurer of said company, none of other chief officers being found.

MICHAEL DEVANNEY, *Marshal,*
By JOHN W. DEVANNEY, *Deputy.*

Fees.

Total.... ..... $2.74

And afterwards, to wit, on the 23rd day of March, A. D. 1897, the following answer was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Answer.

Circuit Court of the United States, Southern District of Ohio, Western Division.

BENJAMIN F. THIEBAUD, Administrator of the Estate of Chris. Sweetman, Deceased,
vs.
THE CINCINNATI, HAMILTON & DAYTON Railroad Company.
} No. 5015. Answer.

The Cincinnati, Hamilton & Dayton Railway Company, incorrectly sued as the Cincinnati, Hamilton & Dayton Railroad Company, admits that it is a corporation organized under the laws of the State of Ohio, and is a citizen of said State and operates a line of railway between Cincinnati and Indianapolis, and that Chris. Sweetman was in its employ on September 18, 1896. It denies each and every other allegation of the petition.

RAMSEY, MAXWELL & RAMSEY,
Attorneys for Defendant.

STATE OF OHIO, *Hamilton County,* } *ss.*:

C. G. Waldo, being first duly sworn, says that he is general manager of the defendant, and that he believes the allegations of its foregoing answer to be true.

C. G. WALDO.

Sworn to before me and subscribed in my presence this 23rd day of March, 1897.

[SEAL.] THOMAS J. WALSH,
Notary Public, Hamilton County, Ohio.

5 And afterwards, to wit, on the 12th day of November, A. D. 1897, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Entry, Journal 4, page 245.

On motion of defendant, it is ordered that this case be passed for trial until Monday, November 15, 1897, at defendant's costs, including the fees of witnesses in attendance until the 15th.

And afterwards, to wit, on the 15th day of November, A. D. 1897, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Entry, Journal 4, page 247.

This day came the parties by their attorneys, whereupon to try the issues joined, a jury being called, came, to wit, Barney Borger, J. B.

Compton, Wm. C. Hefferman, R. P. Harkness, Julius C. Hintz, C. H. James, Wm. Lusby, S. B. Markland, John M. Thomas, A. C. Martin, J. T. Weller, and N. P. Runyan, who were duly empaneled and sworn well and truly to try the issues joined and having heard the testimony, the arguments of counsel and the charge of the court, the jury reported the following verdict, to wit:

"We, the jury herein, do find the issues joined in favor of the plaintiff and assess the damages at $10,000.

(Signed) S. B. MARKLAND, *Foreman.*"

And afterwards, to wit, on the 16th day of November, A. D. 1897, the following motion for a new trial was filed in the clerk's office of the court aforesaid, clothed in the words and figures, following, to wit:

Motion for New Trial.

United States Circuit Court, Southern District of Ohio, Western Division.

BENJAMIN F. THIEBAUD, Administrator of the Estate of Chris. Sweetman, Deceased,
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY. } No. 5015.

6 Motion for new trial.

Now comes the defendant and moves the court to set aside the verdict herein and for a new trial for the following reasons, to wit:

1. The damages awarded by the jury are excessive.
2. The court erred in rejecting evidence offered by the defendant.
3. The court erred in directing the jury to return a verdict for the plaintiff.
4. The court erred in admitting evidence offered by the plaintiff.
5. The court erred in refusing to direct a verdict for the defendant.

RAMSEY, MAXWELL & RAMSEY,
Attorneys for Defendant.

And afterwards, to wit: on the 28th day of January, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures, following, to wit:

Entry, Journal 4, page 319.

Entry Extending Time for Presenting Bill of Exceptions.

For good cause shown, the time for presentation and signing of a bill of exceptions in the within cause is extended thirty days.

And afterwards, to wit: on the 26th day of February, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures, following, to wit:

Entry, Journal 4, page 356.

For good cause shown the time for filing bill of exceptions in the within cause is extended thirty days.

And afterwards, to wit: on the 25th day of March, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures, following, to wit:

Entry, Journal 4, page 379.

Entry Extending Time for Presenting Bill of Exceptions.

For good cause shown, the time for filing bill of exceptions in the within cause is extended for 20 days.

7 And afterwards, to wit: on the 12th day of April, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures, following, to wit:

Entry, Journal 4, page 399.

Entry Extending Time for Presenting Bill of Exceptions.

For good cause shown, the time for presenting a bill of exceptions in the above case is extended for the period of sixty days herefrom.

And afterwards, to wit: on the 7th day of June, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Entry, Journal 4, page 451.

Entry Extending Time for Presenting Bill of Exceptions.

For good cause shown, the time for filing bill of exceptions in the within cause is extended for 90 days.

And afterwards, to wit: on the 11th day of July, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures, following, to wit:

Entry, Journal 4, page 476.

Motion for New Trial Overruled.

This cause came on to be further heard at this term on the motion for a new trial and the same was argued by counsel, on consideration whereof the court doth overrule said motion, to which action of the court, defendant by its counsel excepts.

And afterwards, to wit: on the 11th day of July, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures, following, to wit:

Entry, Journal 4, page 476.

Judgment Entry.

Motion for new trial herein having been overruled it is now ordered by the court that plaintiff do have and recover upon
8 the verdict heretofore rendered herein from the said defendant the sum of ten thousand dollars with interest thereon from the 16th day of November, 1897, to all of which defendant excepts.

And afterwards, to wit: on the 19th day of July, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures, following, to wit:

Entry, Journal 4, page 496.

Entry Allowing Bill of Exceptions.

Now comes the defendant and presents its bill of exceptions in the within cause, which is allowed, signed, sealed and ordered to be made a part of the record.

And afterwards, to wit: on the 19th day of July, A. D. 1898, the following bill of exceptions was filed in the clerk's office of the court aforesaid, clothed in the words and figures, following, to wit:

Bill of Exceptions.

Circuit Court of the United States, Southern District of Ohio, Western Division.

BENJAMIN F. THIEBAUD, Administrator of Chris. Sweetman, Deceased, *vs.* THE CINCINNATI, HAMILTON & DAYTON RAILROAD Company.	No. 5015.

Bill of exceptions.

Be it remembered that at the trial of the above-entitled action of October term, A. D. 1897, before the undersigned, George R. Sage, judge, and a jury, it appeared from the evidence and admissions of counsel that the plaintiff's intestate, Chris. Sweetman, was killed in a collision with a freight engine on the defendant's railroad in Fayette county, Indiana, between Longwood switch and
9 Saulter's switch on September 18, 1896, under the following circumstances, being at the time, as he had been for many years previously, in the defendant's employ as a locomotive engineer.

Said deceased on said day was running an engine drawing the pay-car of the defendant going eastwardly from Indianapolis, Indiana, to Hamilton, Ohio.

The defendant's freight train No. 95 also going eastwardly between said points was stalled near Longwood switch. The conductor of said freight train thereupon ordered part of the cars placed on said Longwood switch or side track and proceeded with the balance of the train to Saulter's switch or side track, four and a half miles distant east, intending to come back to Longwood switch for the part of the train he left there. From Saulter's switch to Connersville is $\frac{8}{10}$ of a mile and at said last-mentioned point a telegraph operator was stationed. Having placed said freight cars on the switch at Saulter's switch the conductor and engineer of No. 95 started west with the locomotive and crew to get the cars which had been left at Longwood switch and came into said collision with the deceased's locomotive east of Longwood switch. The conductor and engineer of freight train No. 95 had not left and did not leave a flagman or signals at Longwood switch and did not go to Connersville to receive orders before proceedings westwardly to Longwood switch on the main track, and in failing to leave a flagman or place signals at Longwood switch, or in not going to Connersville to receive orders before proceeding westwardly on said main track, were negligent and said negligence was the cause of said accident.

The deceased was guilty of no negligence and had the right to be with his train at the place where and at the time when he was. The railroad was a single track.

The court charged the jury, among other things, that inasmuch as deceased had been killed through the negligence of a fellow-servant, the defendant would probably not be liable at common law, but that it was liable under the act of the General Assembly of Indiana, for the negligence charged and admitted. To which part of the charge the defendant at the time excepted. The act of the General Assembly of Indiana referred to in said charge, upon which plaintiff relied for recovery, is the act approved March the 4th, 1893, chapter 130, entitled:

"An act regulating liability of railroad and other corporations except municipal for personal injuries to persons employed by them fixing the rules of evidence which shall govern in such cases and providing that the decisions or statutes of other States shall not be pleaded or proven as a defense in this State; provided, further, that its provisions shall not apply to any injuries before it shall take effect nor in any manner to any suits or legal proceedings pending at the time it takes effect and declaring an emergency." Laws of Indiana (1893), p. 294; Revised Statutes of Indiana (1894), sec. 7083–7087.

It also appeared in the course of the trial that the deceased at the time of his death was, and prior thereto had been, a resident and citizen of the State of Ohio and that the widow and children mentioned in the petition had remained and were residents and citizens of the State of Ohio.

The defendant moved to dismiss the action for want of jurisdiction, but the court overruled said motion, holding that the court had jurisdiction because, as it was admitted, the administrator was at the commencement of the action, and had continued to be a resident

and citizen of the State of Indiana, to which the defendant at the time excepted.

The plaintiff also offered in evidence letters of administration issued to Benjamin F. Thiebaud duly certified according to the acts of Congress, hereto attached and made a part hereof marked Exhibit A, and also duly certified copy of the proceedings of the court of Fayette county, Indiana, in the matter of the appointment of Benjamin F. Thiebaud, administrator of Chris. Sweetman, hereto attached and made a part hereof and marked Exhibit B.

The defendant also in the course of said trial called as a witness CHARLES M. CIST, who being duly sworn, testified as follows:

Direct examination.

By Mr. RAMSEY, counsel for defendant:

Q. Mr. Cist, you made an application in Indiana for the appointment of an administrator for the deceased?

A. At the request of the widow I did.

Q. You represented to the court in your application that he left an estate of about one hundred dollars in that county to be administered?

A. I did.

Q. Of what did that estate to which you refer, the hundred dollars, consist?

A. Of a gold watch and some other articles of personal property that were left by him in the county at the time of his death, rings and chains, &c.

11 Q. As a matter of fact he had also a claim against the railroad company, had he not?

A. Yes, but I knew that would not found an administration.

Q. Where were the watch and chain and personal effects that you have referred to at the time you made your application?

A. They were there. But I object to this line of question.

The court thereupon said:

I don't see how you can attack that appointment.

Mr. Ramsey said:

I am not attacking that appointment, I simply want to have the case fully presented to the court on the question of jurisdiction. I want to make it appear that the claim that he is now suing for is on behalf of the next of kin and that is the whole estate. I don't know that it is necessary, but I would like to have the record so show, so that the question can be settled once for all as to the jurisdiction of the court.

Mr. Cleveland, of counsel for plaintiff, then said:

I don't think you can make a collateral attack.

The court said: He wants to show that there was no other estate except this claim. I suppose he wants to raise the question that where an administrator is appointed merely for the bringing of suit that the jurisdiction cannot be sustained. You cannot attack that record.

Mr. Ramsey then put the following question to the witness:

Q. Where were those personal effects that you spoke of at the time you made your application?

Counsel for plaintiff objected to this question.

The court then said: I don't think that it is competent because that cannot be used for any other purpose than to attack this record. The record is conclusive on that in this case. You can prove the fact, if it be a fact that there was no other estate than that which is claimed.

Mr. RAMSEY: I don't want to attack the record, but I want to show that there was no other estate.

The COURT: You are asking what there was in Fayette county; that I rule out.

To which ruling of the court counsel for the defendant then and there excepted.

12 In witness whereof, I, George R. Sage, judge of said court, within the time allowed for the taking of a bill of exceptions by the former orders of the court in this case, do now set my hand and seal this 18th day of July, A. D., 1898, to this bill of exceptions presented by the defendant, and do order that the same be allowed and filed as a part of the record in the case.

GEORGE R. SAGE, [SEAL.]
United States District Judge for the Southern District of Ohio, Sitting in and Holding Circuit Court in the Above-entitled Action.

Approved:
L. MAXWELL, JR.
H. CLEVELAND.

EXHIBIT A.

STATE OF INDIANA, } ss:
County of Fayette, }

In the Matter of the Estate of CHRIS. SWEETMAN, Deceased.
Benjamin F. Theibaud, Administrator.

Be it remembered that on the 20th day of February, 1897, letters of administration were issued upon the estate of Chris. Sweetman to Benjamin F. Theibaud in the words and figures following, to wit:

"I, Miles K. Moffett, clerk of the circuit court for the county of Fayette, in the State of Indiana, do hereby certify that administration of the estate of Chris. Sweetman, late of Fayette county, deceased, who died intestate, is granted to Benjamin F. Theibaud and the said Theibaud having qualified and given bond as such administrator, he is duly authorized to take upon himself the administration of such estate according to law.

Witness my hand and the seal of said court, this 20th day of February, 1897.

[SEAL.]

MILES K. MOFFETT,
Clerk Circuit Court, Fayette Co.

STATE OF INDIANA, } ss:
County of Fayette, }

I, Miles K. Moffett, clerk of the circuit court in and for the county and the State aforesaid, do hereby certify that the above and the foregoing is a true, full and complete copy of the letters of administration issued to the above-named, Benjamin F. Theibaud, upon the estate of Chris. Sweetman, on the day and the date above written as the same is now on record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at my office in the city of Connersville, this the 3d day of May, A. D. 1897.

[SEAL.]

MILES K. MOFFETT,
Clerk Fayette Circuit Court, Fay. Co.

13 *Judge's Certificate under Act of Congress.*

STATE OF INDIANA, } ss:
Franklin County, }

I, Ferdinand S. Swift, sole judge of the Fayette circuit court and judge of the 37th judicial circuit of the State of Indiana, do hereby certify that Fayette county, in the State of Indiana, is comprised within and is part of the said 37th judicial circuit of said State, and that the foregoing attestation and certificate of administration are in due form of law, and that the said Miles K. Moffett is, and at the time of making of said certificate and attestation was, the clerk of the said Fayette circuit court of said State, and is, and at said time was, the proper officer to make such attestation and certificate, and that his signature thereto is genuine, and that as such clerk he is the sole custodian of the papers, documents, records and seals pertaining to said court.

Witness my hand and seal of the said court, this eleventh day of May, 1897.

FERDINAND S. SWIFT,
Judge Fayette Circuit Court.

PL'FF'S EXHIBIT "B." K. J. Harris, Nov. 16, '97.

Judge's Certificate as to Clerk's Signature.

STATE OF INDIANA, } ss:
County of Franklin, }

I, Ferdinand S. Swift, sole judge of the Fayette circuit court within and for the county of Fayette, in the State of Indiana, which said county forms a part of the 37" judicial circuit of the said State of Indiana, of which said 37" judicial circuit in said State I am also

sole judge, do hereby certify that Miles K. Moffett, whose signature is annexed to the above certificate, was at the date thereof, to wit, on the 3" day of May, 1897, the duly elected, qualified and acting clerk of the said Fayette circuit court of the county and State aforesaid, and that the official acts and doings of said clerk are entitled to full faith and credit; that he is the proper officer to make such attestations, and that by virtue of his said office he is the legal custodian of the records of the clerk's office of the aforesaid county and State.

Given under my hand — seal this the 3" day of May, 1897.

FERDINAND S. SWIFT,
Judge of the Fayette Circuit Court.

14 STATE OF INDIANA, }
County of Fayette, } ss:

I, Miles K. Moffett, clerk of the Fayette circuit court within and for the county and the State aforesaid, do hereby certify that said court is a court of record, and that the Honorable Ferdinand S. Swift, whose name is subscribed to the foregoing certificate, was at the time of making the same the sole judge of the said court, duly elected, commissioned and qualified as such, and that the signature to said certificate is the genuine signature of the said Ferdinand S. Swift.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Connersville, this the 3" day of May, 1897.

[SEAL.] MILES K. MOFFETT,
Clerk Fayette Circuit Court.

EXHIBIT B.

STATE OF INDIANA, }
County of Fayette, } ss:

In the Matter of the Estate of CHRIS. SWEETMAN, Deceased.
Benjamin F. Thiebaud, Administrator.

Be it remembered that on the 20" day of February, 1897, in vacation of the Fayette circuit court, the following proceedings were had in the said above-entitled matter, to wit:

In the Matter of the Estate of CHRIS. SWEETMAN, Deceased.
Benjamin F. Thiebaud, Administrator.

Be it remembered that on the 20" day of February, 1897, in vacation of the Fayette circuit court, there was filed in the office of the clerk of said court the verified petition of Charles M. Cist, asking the appointment of Benjamin F. Theibaud as administrator of the estate of Chris. Sweetman, in the words and figures following, to wit:

(H. I.)

In which he shows that said decedent departed this life at and in Fayette county, State of Indiana, on the 18" day of September, 1896,

intestate, leaving a personal estate to be administered of the probable value of $100.00; that his widow and next of kin are not residents of said county nor State.

And the clerk examines said petition, and being fully advised in the premises appoints the said Benjamin F. Theibaud as such administrator, which appointment he accepts and now comes and files his bond as such administrator, conditioned upon the honest and faithful discharge of the duties of his trust, in the penal sum of $200.00, with Joseph I. Little and Edwin M. Stone as his sureties thereon, which bond is now approved by the clerk and is in words and figures following, to wit. (H. I.)

And the said Benjamin F. Theibaud being duly sworn by the said clerk for the honest and faithful discharge of the duties of his trust herein letters of administration are issued to him upon said estate, in the words and figures, following, to wit: (H. I.)

And be it further remembered that afterwards, to wit, on the 1" day of March, 1897, the same being the 1" judicial day of the March term, 1897, of the Fayette circuit court in and for the county of Fayette and the State of Indiana begun, held and continued at the court-house in the city of Connersville, commencing on Monday, the 1" day of March, 1897, before the Honorable Ferdinand S. Swift, sole judge of said court, the following further proceedings were had in the said above entitled cause, to wit:

In the Matter of the Estate of CHRIS. SWEETMAN, Deceased.
Benjamin F. Theibaud, Administrator.

At this day the clerk of this court lays before the judge thereof the petition filed, bond taken and approved and letters issued by the said clerk to Benjamin F. Theibaud as administrator of the estate of said decedent, all done in vacation.

And the court examines all of said papers and approves the same in all things and now hereby fully ratifies and confirms the acts of the said clerk in this behalf as the acts of the court now here.

STATE OF INDIANA, } ss:
County of Fayette, }

I, Miles K. Moffett, clerk of the Fayette circuit court in and for the county and the State aforesaid, do hereby certify that the above and the foregoing is a true, full and complete copy of the record entries made in the probate order books of said court, in the said above-entitled matter as the same is now and remains of record in my office of which record by virtue of my office I am the legal custodian.

In testimony whereof I have hereunto set my name and affixed the seal of said court at my office in the city of Connersville this the 11" day of May, 1897.

[SEAL.]

MILES K. MOFFETT,
Clerk of Fayette Circuit Court.

16 STATE OF INDIANA, } ss:
Franklin County, }

I, Ferdinand S. Swift, sole judge of the 37th judicial circuit of the State of Indiana, and of the Fayette circuit court, do hereby certify that the foregoing attestation and certificate of administration and copy of order book of said court are in due form of law and that the said Miles K. Moffitt is and was at the time of making said attestation and certificate the clerk of the said Fayette circuit court of said State, and is and at said time was the proper officer to make such certificate and attestation, that his signature thereto is genuine, and that as such clerk he is the sole custodian of the papers, documents, records and seals pertaining to said office.

Witness my hand this 12 day of May, 1897.

FERDINAND S. SWIFT,
Judge Fayette Circuit Court.

STATE OF INDIANA, } ss:
County of Fayette, }

I, Miles K. Moffett, clerk of the Fayette circuit court, in and for the county and State aforesaid, do hereby certify that said court is a court of record; that Ferdinand S. Swift, whose name is subscribed to the foregoing certificate, was at the time of making the same the sole judge of said court, duly elected, commissioned and qualified as such and that I am well acquainted with the handwriting of such judge, and that his signature to the same is the genuine signature of the said Ferdinand S. Swift.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office, in the city of Connersville, this the 12th day of May, 1897.

[SEAL.] MILES K. MOFFETT,
Clerk Fayette Circuit Court.

17 And afterwards, to wit, on the 30th day of August, A. D. 1898, the following petition for writ of error and assignment of errors was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Petition for Writ of Error and Assignment of Errors.

United States Circuit Court, Southern District of Ohio, Western Division.

BENJAMIN F. THIEBAUD, Administrator of the Estate of Chris. Sweetman, Deceased,
vs.
THE CINCINNATI, HAMILTON AND DAYTON RAILROAD COMPANY.

Petition for writ of error and assignment of errors.

The defendant prays for a writ of error to the United States circuit court of appeals for the sixth circuit and assigns for error.

1. That the court erred in charging the jury that the defendant

was liable under the act of the General Assembly of Indiana, approved March 4th, 1893, chapter 130.

2. That said act is in contravention of the 14th amendment of the Constitution of the United States.

3. That the said act is in contravention of the constitution of the State of Indiana, and especially of article 11, section 23, of article 4, sections 19 and 23 thereof.

4. That the court erred in overruling the defendant's motion to dismiss the action for want of jurisdiction.

5. That the court erred in refusing to permit the defendant to put the following question to the witness Charles M. Cist: "Where were those personal effects that you spoke of at the time you made your application?"

6. That the court erred in ruling out and excluding the testimony offered by the defendant to show that the plaintiff's administration was not based upon any personal estate in Fayette county, Indiana, other than the claim sued on.

MAXWELL & RAMSEY,
Attorneys for Defendant.

18 And afterwards, to wit, on the 1st day of September, A. D. 1898, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Entry, Journal 4, page 515.

This cause came on to be heard on the petition for the allowance of a writ of errors filed herein by the defendant, which petition upon consideration of the court is hereby allowed, and the court allows a writ of error to the United States circuit court of appeals for the sixth circuit, upon the filing of a supersedeas bond in the sum of fifteen thousand dollars ($15,000) with good and sufficient security to be approved by the court.

And afterwards, to wit, on the 1st day of September, A. D. 1898, the following supersedeas bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Supersedeas Bond.

[5c. revenue documentary stamp.]
[National Surety Co., N. Y., Aug. 30, 1898.]
[10c. revenue documentary stamp.]
[National Surety Co., N. Y., Aug. 30, 1898.]

Know all men by these presents, that we, the Cincinnati, Hamilton and Dayton Railroad Company, as principal, and the National Surety Company of New York, as sureties, are held and firmly bound unto Benjamin F. Thiebaud, administrator of Chris. Sweetman, deceased, in the full and just sum of fifteen thousand dollars, to be paid to the said Benjamin F. Thiebaud, administrator, his certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs,

executors and administrators, jointly and severally, by these presents.

Sealed with our seals, and dated this 30 day of August, in the year of our Lord, one thousand, eight hundred and ninety-eight.

Whereas, lately at a term of the circuit court of the United States, for the southern district of Ohio, western division, in a suit depending, in said court, between said administrator and said railroad company, a judgment was rendered against the said railroad company, and the said railroad company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court
19 to reverse the judgment in the aforesaid suit, and a citation directed to the said administrator, citing and admonishing him to be and appear at a session of the United States circuit court of appeals for the sixth circuit, to be holden at the city of Cincinnati, in said circuit, on the first day of October next:

Now, the condition of the above obligation is such that if the said The Cincinnati, Hamilton and Dayton Railroad Company shall prosecute said writ to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

THE CINCINNATI, HAMILTON AND DAYTON RAILROAD CO.,
By LAWRENCE MAXWELL, JR., *Its Attorney.*
NATIONAL SURETY COMPANY, [SEAL.]
By M. F. WILSON, *Res. Vice-president.*

Attest: GAINES W. SHERRILL,
Res. Assistant Secretary.

20 Sealed and delivered in presence of—
BEN. B. NELSON.
EMILY M. LANGERMAN.

[50c. revenue documentary stamp.]
[C., H. & D. R. R. Co., 8, 30, '98.]

Approved by—
GEO. R. SAGE,
U. S. Dist. Judge, S. D. O.

And afterwards, to wit, on the 15th day of April, A. D. 1899, the following petition for writ of error to Supreme Court of the United States and assignment of errors was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Petition for Writ of Error to the Supreme Court of the United States and Assignment of Errors.

Circuit Court of the United States, Southern District of Ohio, Western Division.

BENJAMIN F. THIEBAUD, Adm'r of Chris. Sweetman, Deceased,
vs.
THE CINCINNATTI, HAMILTON & DAYTON RAILROAD Company.
No. 5015.

Petition for writ of error to the Supreme Court of the United States and assignment of errors.

The defendant shows to the court that, having duly prosecuted the writ of error heretofore allowed by the court to the United States circuit court of appeals for the sixth circuit, the plaintiff in this case, being the defendant in error, filed a motion in said
22 circuit court of appeals to dismiss said writ of error upon the ground that the same should have been taken to the Supreme Court of the United States instead of to the United States circuit court of appeals, and that said circuit court of appeals was therefore without jurisdiction upon said writ of error.

Said circuit court of appeals, being in doubt whether it has jurisdiction, has certified certain questions to the Supreme Court of the United States. In view of said proceedings, the defendant, being now in doubt as to whether said writ of error to the United States circuit court of appeals was properly allowed, but without prejudice to said proceeding in error, if it shall hereafter be determined that the same was properly taken, and that the circuit court of appeals has jurisdiction thereof, now prays for a writ of error to the Supreme Court of the United States, and assigns for error:

1. That this court erred in charging the jury that the de-
23 fendant was liable under the act of the General Assembly of Indiana, approved March 4, 1893, chapter 130.

2. That said act is in contravention of the fourteenth amendment of the Constitution of the United States.

3. That the case made in this court is not within the provisions of said act.

4. That said act is in contravention of the constitution of the State of Indiana, and especially of article II, section 23, and of article 4, sections 19 and 23 thereof.

5. That the court erred in overruling the defendant's motion to dismiss the action for want of jurisdiction.

6. That the court erred in refusing to permit the defendant to put the following question to the witness C. M. Cist: "Where were those personal effects that you spoke of at the time you made your application?"

7. That the court erred in ruling out and excluding the
24 testimony offered by the defendant to show that the plaintiff's administration was not based upon any personal estate in Fayette county, Indiana, other than the claim sued on.

8. That the plaintiff's appointment as administrator was void, and that this court erred in holding that the appointment could not be collater-ly attacked, and in excluding evidence to show that it was void.

9. That the plaintiff, having been appointed administrator in Indiana alone, cannot maintain this action in this court.

MAXWELL & RAMSEY,
Attorneys for Defendant.

25 And afterwards, to wit, on the 15th day of April, A. D. 1899, an entry was made upon the journal of said court, clothed in the words and figures following, to wit:

Journal entry, Journal 5, page 148.

This cause came on to be heard upon the defendant's petition for the allowance of a writ of error to the Supreme Court of the United States; on consideration whereof, and it being known to the court that the facts stated in said petition with reference to the writ of error formerly allowed to the circuit court of the United States for the sixth circuit are true, and it being doubtful whether a writ of error should be taken to the Supreme Court of the United States or to the United States circuit court of appeals, said petition is now granted and a writ of error, as prayed, is allowed to the Supreme Court of the United States.

The bond is fixed at $500.00.

WM. H. TAFT,
Circuit Judge.

April 15, '99.

26 And afterwards, to wit, on the 17th day of April, A. D. 1899, the following error bond was filed in the clerk's office of the court aforesaid, clothed in the words and figures following, to wit:

Error Bond.

Circuit Court of the United States, Southern District of Ohio, Western Division, *ss:*

BENJAMIN F. THIEBAUD, Administrator of Chris. Sweetman, Deceased,
vs.
THE CINCINNATI, HAMILTON & DAYTON RAILROAD COMPANY.

Know all men by these presents that we, The Cincinnati, Hamilton and Dayton Railroad Company and Fred'k H. Short, are held

and firmly bound unto Benjamin F. Thiebaud, administra-
27 tor of Chris. Sweetman, deceased, in the sum of five hundred ($500.00) dollars, to be paid to the said Benjamin F. Thiebaud, administrator of Chris. Sweetman, deceased, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 17th day of April, 1899.

Whereas the above-named The Cincinnati, Hamilton & Dayton Railroad Company has filed its petition for writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named The Cincinnati, Hamilton and Dayton Railroad Company shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obliga-
28 tion to be void; otherwise to remain in full force and virtue.

THE CINCINNATI, HAMILTON & DAYTON
RAILROAD COMPANY, [SEAL.]
By LAWRENCE MAXWELL, JR., *Attorney.*
FRED'K H. SHORT. [SEAL.]

Sealed and delivered in presence of—

BEN. B. NELSON.
JOSEPH A. SCALLAN.

The above security is approved.

WM. H. TAFT,
Circuit Judge of the United States, S. D. O.

29 THE UNITED STATES OF AMERICA, } ss:
Southern District of Ohio, Western Division, }

I, Benjamin R. Cowen, clerk of the circuit court of the United States of America within and for the division and district aforesaid, do hereby certify that the foregoing is a full, true, and complete transcript of the proceedings had by and before said court and as the same appears of record and on file in the office of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at the city of Cincinnati, Ohio, this 20th day of April, A. D. 1899.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN, *Clerk,*
By JANIE W. F. COWEN,
Deputy Clerk.

30 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of Ohio, Greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Benjamin F. Thiebaud, administrator of Chris. Sweetman, deceased, and The Cincinnati, Hamilton and Dayton Railroad Company, a corporation, a manifest error hath happened, to the great damage of the said The Cincinnati, Hamilton and Dayton Railroad Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington on the sixteenth day of May next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 17th day of April, 1899, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the Circuit Court, South'n Dist. of Ohio.]

B. R. COWEN,
Clerk of the Circuit Court of the U. S., S. D. O.

31 [Endorsed:] United States circuit court, S. D. O., W. D. No. 5015. Chris. Sweetman's adm'r *vs.* C., H. & D. R. R. Co. Writ of error. Filed April 18th, 1899. B. R. Cowen, clerk.

32 THE UNITED STATES OF AMERICA, *ss:*

To Benjamin F. Thiebaud, administrator of Chris. Sweetman, deceased, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the sixteenth day of May next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Ohio, wherein The Cincinnati, Hamilton and Dayton Railroad Company, a corporation, is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Seal of the Circuit Court, South'n Dist. of Ohio.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 17th day of April, in the year of our Lord one thousand eight hundred and ninety-nine.

WM. H. TAFT,
Circuit Judge.

April 18, '99.

33 [Endorsed:] Marshal's civil docket No. 922. United States circuit court, S. D. O., W. D. No. 5015. Chris. Sweetman's adm'r *vs.* C., H. & D. R. R. Co. Citation to defendant in error. Filed Ap'l 19th, 1899. B. R. Cowen, clerk. Filed Apr. 19, 1899, B. R. Cowen, clerk.

Security for costs furnished.

Received this writ at Cincinnati, Ohio, on the 18th day of April, 1899, and on the same day I served the same by handing a true copy hereof, with all the endorsements thereon, personally to Charles M. Cist, attorney for the within-named Benjamin F. Thiebaud, administrator of Chris. Sweetman.

VIVIAN J. FAGIN,
United States Marshal, S. D. O.,
By M. H. SPILLARD, *Deputy.*

Fees.

1 copy	.50
1 service	2.00
Mileage	.06
	$2.56

Endorsed on cover: File No., 17,379. S. Ohio C. C. U. S. Term No., 27[illegible]. The Cincinnati, Hamilton and Dayton Railroad Company, plaintiff in error, *vs.* Benjamin F. Thiebaud, administrator of Chris. Sweetman, deceased. Filed April 24, 1898.